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Senate

Statement of Senator Dianne Feinstein

*“On an Amendment to the Intelligence Reform Act of 2004
Clarifying the Role of the FBI in the Intelligence Community”*

Mrs. FEINSTEIN. Mr. President, I thank the chairman and ranking member of the committee. I have indicated I am withdrawing one amendment, No. 3719, which clarifies the tactical intelligence part of the bill. I don't believe that is necessary. It has been withdrawn. I am also withdrawing amendment No. 3715 to strike the prohibition on co-location.

At this time I would like to call up and speak on amendment No. 3718 and then set it aside.

I reiterate my strong support for this bill and the balance that has been struck by the committee in the drafting of this bill. It strikes the right balance. I am pleased to be an original cosponsor.

In my remarks on Monday, I mentioned I was going to be submitting an amendment concerning the relationship between the FBI foreign intelligence functions and the national intelligence director. I thank both the majority and the ranking member staff for working with my staff to work out this amendment. It will be worked out and it will be the chairman's intent to present this amendment for unanimous consent.

However, I will clearly state the intent of the amendment. The FBI functions as part of the intelligence community in the gathering, analyzing, and disseminating of information about the plans, intentions, and capabilities of our foreign enemies, including, most

importantly, counterterrorists. That effort, in my view, should be under the overall supervision of the national intelligence director.

Let me be clear, though, this amendment does not mean the national intelligence director should run or control operations inside the United States. When the FBI, under the operational control of the FBI director and the Attorney General, works as a foreign intelligence agency, it should do so as part of that community under the general guidance of the national intelligence director.

An excellent example of this issue is now part of the extensive record of structural intelligence failure prior to the

September 11 attacks, the way the intelligence community handled, or I should say mishandled, the so-called Phoenix document information and the Moussaoui information.

Here we had in two different places FBI agents acquiring factual information which is of clear foreign intelligence value: that foreign individuals, associated with foreign terrorist organizations, may have been learning to fly passenger planes. At the very same time, the rest of the intelligence community had information that al-Qaida was preparing to strike against the United States and also that there had been past consideration of the use of airplanes in an attack methodology.

Putting together these two disparate pieces of information is the business of an effective intelligence community. But it did not happen, in part, I believe, because the FBI part of the communication was not linked up with the Central Intelligence Agency and the National Security

Agency parts of the community.

The bill before the Senate goes far toward remedying this by placing the FBI foreign intelligence elements under the overall supervision of the national intelligence director. I am concerned the bill presently contains ambiguities that, if left in, will cause confusion in the future. That is because the bill incorporates, with no change, current law which defines the role of the FBI intelligence activities.

However, that law is confusing, it is internally inconsistent, and I believe it is the source of many of the problems which beset the FBI as part of the intelligence community.

This amendment does three basic things to fix this. I want the record to reflect that. It clarifies critical definitions in the law. It makes a small alteration in the current law to make clear that the term of art "counterintelligence" is a subset of foreign intelligence, not an alternative to foreign intelligence.

Second, it makes clear that when the FBI is engaged in law enforcement, it is not part of the national intelligence program or under the NID supervision, but removes the word "counterintelligence" from this so-called carve-out language. This is critical because this language in existing law was the confusing foundation upon which much of the wall between the FBI and the rest of the intelligence community was built.

This amendment creates a directorate of intelligence in the FBI. As written presently, the bill places the activities of the Office of Intelligence of the FBI clearly within the national intelligence program. This is good, but because the Office of Intelligence has no statutory basis, it could be rendered useless in the future if that office is removed or changed by a future FBI director.

This amendment renames the office the Directorate of Intelligence and gives it a clear basis in law.

Finally, this amendment introduces some clarifying language to ensure that the section governing “FBI improvements” is read to ensure that these improvements come as part of a larger, coordinated effort, led by the national intelligence director to improve the standards and practices of the entire intelligence community.

It does this by ensuring that the FBI Director’s improvement program is guided by the national intelligence director. And it defines a “certified intelligence officer” -- that is a term introduced for the first time in the underlying bill -- to make sure that “certification” means meeting intelligence community standards, developed by the national intelligence director.

The bottom line is that the FBI’s intelligence functions must be part of a larger effort, guided by a strong leader, and linked carefully with all the other agencies and Departments in the intelligence community.

There are still two parts of this amendment that are being worked out by staff. I appreciate their hard work very much and thank them. I also would like to thank the chair and the ranking member for their cooperation. I am very hopeful this amendment can later be adopted by unanimous consent.

I thank the Chair.

Mr. President, I ask unanimous consent that amendment No. 3718 be set aside for the present time.

I yield the floor.